

a

YEOW & FOO SDN. BHD.

v.

PENINSULAR RANK SDN. BHD.

b

HIGH COURT MALAYA, TAIPING
DATO' HJ. ABDUL MALIK B. HJ. ISHAK J.
[ORIGINATING SUMMONS NO.24-116-94 (T)]
5 SEPTEMBER 1994

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LAND LAW: Caveat - Section 323 National Land Code No. 56 of 1965 - Claim of payment made towards deposit for purchase of land - No valid sale/purchase agreement entered into between parties - Whether defendant has caveatable interest - Section 322(1) (b) and s. 327(1) of National Land Code - Whether any contractual relationship between defendant and plaintiff which entitles defendant to lodge private caveat.

This was an application by the plaintiff/caveatee to remove the private caveats lodged by the defendant/caveator on thirteen (13) pieces of land owned by the plaintiff/caveatee.

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Held:

There are serious question to be tried and on the balance of convenience, the private caveats on all the properties should be extended until the disposal of the main action.

[Plaintiff/caveatee's application dismissed with costs].

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Cases referred to:

Mahadevan & Anor v. Patel [1975] 2 MLJ 207 (**refd**)
Wong Kuan Tan v. Gambut Development Sdn. Bhd. [1984] 2 MLJ 113 (**dist**)
N. Vangedaselam v. Mahadevan & Anor [1976] 2 MLJ 161 FC (**refd**)
Chng Sin Poey & Sons Sdn. Bhd. v. Quek Lian Meng [1970] 1 MLJ 98(**refd**)
Mosbert Berhad (In Liquidation) v. Stella D'Cruz [1985] 2 MLJ 446 SC (**refd**)
Re Faulke's Caveat [1906] 26 NZLR 392 (**refd**)
Eng Mee Yong & Ors. v. Letchumanan [1979] 2 MLJ 212 (**foll**)

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Legislation referred to:

National Land Code 1965, ss. 322(1)(b), 323, 327(1)

For the plaintiff/caveatee - Ti Chin Chu Ann (Chan Kok Keong with him); M/s. Chan & Associates.

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For the defendant/caveator - Zakaria; M/s. Zakaria & Co.

JUDGMENT**Hj. Abdul Malik b. Hj. Ishak J:**

This is an application by the plaintiff/caveatee (enclosure 1) to remove the private caveats lodged by the defendant/caveator on thirteen (13) pieces of land owned by the plaintiff/caveatee. The plaintiff/caveatee as registered proprietors of these thirteen (13) pieces of land (Lot 2019 P.N. No. 30340, Lot 2020 P.N. 30341, Lot 2021 P.N. 30342, Lot 2022 P.N. 30343, Lot 2023 P.N. 30344, Lot 2024 P.N. 30345, Lot 2025 P.N. 30346, Lot 2026 P.N. 30347, Lot 2027 P.N. 30348, Lot 2028 P.N. 30349, Lot 2029 P.N. 30350, Lot 2030 P.N. 30351 and Lot 2032 P.N. 30353, all situated in Mukim Kamunting, District of Larut and Matang, State of Perak) entered into an agree-

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ment to sell the thirteen (13) pieces of land (“properties”) to the defendant/caveator at an agreed sum of RM780,000. But, somehow, the sale and purchase agreement between the parties was not effected formally as the defendant/caveator refused to sign the said agreement (exhibit “YBT-3” in enclosure 2). It seems that the refusal by the defendant/caveator to sign the sale and purchase agreement stems from the refusal by the Majlis Perbandaran Taiping (“MPT”) to convert the conditions of the properties from shop houses to light industries. Though this pre-requisite requirement was not set out in the unsigned sale and purchase agreement (exhibit “YBT-3”) in enclosure 2), the defendant/caveator exhibited two letters, one from the defendant/caveator themselves marked as exhibit “PR1” of enclosure 5, and the other, from MPT marked as exhibit “PR4” of enclosure 5. The letter in exhibit “PR1” of enclosure 5 reads thus:

M/s Yeow & Foo Sdn. Bhd,
69A, Jalan Multhal R-Bakci,
30300 Ipoh, Perak Darul Ridzuan

Date 20 July 1993

Dear Sir,

Re: No. Lot(s) 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2930, 2032, Mukim Kamunting, Daerah Larut & Matang, Perak Darul Ridzuan

We would like to inform you that we would like to purchase the above property(ies) for RM780,000. Before signing (the) agreement, we want the confirmation letter from Majlis Perbandaran Taiping to confirm that the above properties can be use(d) for light industries.

As (At) your directors (Mr. Yeow/Mr. Micheal Yeh/Mr. Chan) request, we agree the payment of deposit of 10% and have the caveatable interest for the above properties. Your directors agree to refund the deposit to us if the above properties is (are) not approves (d) by Majlis Perbandaran Taiping for light industries.

We will remove the caveat for (of) the above property(ies) after we receive the refund of RM78,000.

Thank you.

Yours faithfully,

(Signed)

Peninsular Rank Sdn. Bhd.

While the letter in exhibit “PR4” of enclosure 5 reads as follows:

Peninsular Rank Sdn. Bhd.,
No. 1, Lorong Talang Satu,
Prai Garden,
13600 Prai,
Penang.

7 Disember 1993

Tuan,

Memohon kelulusan untuk menjalankan perindustrian kecil (Light Industry) di Lot 23 hingga 34 dan 36, Jalan Taman, Taman Lela Satu, 34000 Taiping, Perak Darul Ridzuan

Merujuk surat tuan bertarikh 26 Julai 1993, mengenai perkara yang di atas.

- a** 2.Majlis memaklumkan tapak yang dipohon adalah untuk rumah kedai. Oleh itu pada dasarnya, majlis tidak dapat menyokong permohonan ini kerana lot ini adalah lot kedai.
- Sekian, terima kasih.
- “Berkhidmat Untuk Negara”
- b** Saya yang menurut perintah,
- (signed)
(Hilmi bin Abdullah)
Yang Di Pertua
Majlis Perbandaran Taiping
- c** In compliance with the undertaking mentioned in the letter of exhibit “PR1” of enclosure 5, the defendant/caveator duly paid RM78,000 by way of Bank of Commerce cheque dated 22 July 1993 in favour of the plaintiff/caveatee. The defendant/caveator then proceeded on 28 December 1993 to lodge private caveats on the properties citing one potent reason: “Menahan segala urusan mengenai tanah itu” (exhibit “YBT-2” of enclosure 2). The plaintiff/caveatee now applies to lift those private caveats away.
- d** The defendant/caveator contends that they have a caveatable interest on those properties.
- The plaintiff/caveatee contends otherwise and argues that the desire of the defendant/caveator to seek a refund of their deposit cannot be said to be a caveatable interest capable of being registered. The plaintiff/caveatee submits further that the failure of the defendant/caveator to pay the balance of the purchase price on or before 31 December 1993 entitles the plaintiff/caveatee to forfeit the deposit by virtue of clause 10 of the unsigned sale and purchase agreement (exhibit “YBT3” of enclosure 2).
- e** Section 323 of the National Land Code enacts as follows (the relevant portion):
- f** (1) The persons and bodies at whose instance a private caveat may be entered are -
- (a) any person or body claiming title to, or any registrable interest in, any alienated land or any right to such title or interest;
- In *Mahadevan & Anor v. Patel* [1975] 2 MLJ 207, the Federal Court had occasion to consider s. 323 of the National Land Code. The facts in that case were that one Ratnavale had business dealings with the respondent, who was the managing director of Messrs Manilal & Sons (M) Ltd. A loan of RM250,000.00 was made to Ratnavale and he acknowledged receipt of this sum from the company. It was their intention that there would be a charge over lands belonging to Ratnavale but the lands were not in fact charged. The respondent, subsequently caused a caveat to be entered against the lands of Ratnavale. The appellants, after the death of Ratnavale,
- g** applied to have the caveat removed. The learned trial Judge held that the respondent had a caveatable interest and refused the application for the removal of the caveat. In dismissing the appeal, Suffin L.P. (as he then was) had this to say:
- the principle is that it is not only a person who has a right to a registrable interest in land that may enter a caveat against the land, but it is any person claiming title to, or any registrable interest in, any alienated land or even claiming only a right to such title or registerable interest, who may enter a caveat (see page 208 left hand column H to I).
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- i**

This would mean that the net is thrown wider. The defendant/caveator here is concerned about their deposit of RM78,000 has therefore the inherent right to lodge the private caveats on those properties.

The argument that the plaintiff/caveatee is entitled to forfeit the deposit under the unsigned sale and purchase agreement must fail for two reasons. Firstly, there was no valid sale and purchase agreement between the parties as the defendant/caveator refused to sign the said agreement. Secondly, the position here is entirely different from that of *Wong Kuan Tan v. Gambut Development Sdn. Bhd.* [1984] 2 MLJ 113 FC relied upon by the plaintiff/caveatee. In that case, there was a concluded sale and purchase agreement and shortly thereafter a Deed of Assignment was executed and the appellant/caveatee there sought to remove the caveat. Hashim Yeop Sani F.J. (as he then was) speaking for the Federal Court ruled that the balance of the purchase price in a transaction was not sufficient to create a caveatable interest. Here, the defendant/caveator is not claiming the balance of the purchase price but rather to recover his deposit in an abortive sale and purchase agreement.

Section 322(1)(b) of the National Land Code enacts that a private caveat may be expressed to bind the land itself or merely a particular interest therein. The cases have established that in the case of the latter, the caveat shall not be capable of being entered in respect of a part of the land but may instead, be entered over the whole of the land provided the effect of the caveat in question is to cover only the particular interest claimed (*N. Vangedaselam v. Mahadevan & Anor* [1976] 2 MLJ 161 F.C., *Chng Sin Poey & Sons Sdn. Bhd. v. Quek Lian Meng* [1970] 1 MLJ 98 and *Mosbert Berhad (In Liquidation) v. Stella D'Cruz* [1985] 2 MLJ 446 S.C.). The plaintiff/caveatee argues further that the defendant/caveator is entitled to lodge private caveats not on all the properties but only a portion of it equivalent to the deposit sum deposited by the defendant/caveator. The plaintiff/caveatee seeks to identify Lot 2021 P.N. 30342 as the likely piece of land that the defendant/caveator could possibly caveat. It is now trite law that the failure to lodge a caveat covering only a particular interest will not result in the removal of the caveat in question as the Court has the power to vary or amend existing endorsement of the caveat under s. 327(1) of the National Land Code (*Chng Sin Poey & Sons Sdn. Bhd. v. Quek Lian Meng (supra)*) for the sole purpose of protecting the rights actually claimed by the caveator. I am now asked to vary or amend the existing endorsements of the private caveats on the properties. This is certainly a discretion vested in me, and I am inclined not to exercise that discretion because it is difficult, if not impossible, to pinpoint which particular lot is to be considered as equivalent to the deposit sum.

Is there contractual relationship between the defendant/caveator and the plaintiff/caveatee entitling the defendant/caveator to lodge the private caveats on those properties? No doubt there was no formal and executed agreement in writing between the parties since the defendant/caveator, as stated in the brief recital of the facts, refused to sign the agreement, yet the defendant/caveator on the strength of the letters in exhibits "PR1" and "PR4" of enclosure 5, has a contractual relationship and a caveatable interest on those properties. Those letters would clearly show the sole pre-requisite requirement which the defendant/caveator sought to highlight and *prima facie* would entitle them to lodge those caveats on the properties. Stout C.J. in *Re Faulke's Caveat* [1906] 26 NZLR 392 had this to say:

- a* In my opinion what the Court at the present stage has to see is not that the caveator must ultimately succeed, but that he has a *prima facie* case.

Finally, Lord Diplock in *Eng Mee Yong & Ors. v. Letchumanan* [1979] 2 MLJ 212 laid down the following guidelines in dealing with the nature of the onus that lies upon the caveator in an application by the caveatee under s. 327 of the National Land Code for the removal of the caveat:

- b* ...So too in an application by the caveator under s. 327 for removal of a caveat once the caveatee has met the first requirement of satisfying the Court that the claim on which his caveat is based does raise a serious question to be tried, the balance of convenience would in the normal way and in the absence of any special circumstances be in favour of leaving the caveat in existence until proceedings, brought and prosecuted timeously by the caveator, for specific performance of the contract of sale
- c* which he alleges had been tried.

- Applying these guidelines to the facts of the case, there are serious questions to be tried and that on the balance of convenience, the private caveats on all the properties should be extended until the disposal of the main action for three main reasons. Firstly, the defendant/caveator in their affidavit in reply (enclosure 5, paragraph 9) enclosed an unnumbered writ of summons and a statement of claim. A check with the relevant file reveals that the writ and the statement of claim was filed on 25 July 1994 bearing civil suit number 22-35-94(T). On 16 August 1994, the statement of claim was amended bringing with it several amendments, the crucial parts being the specific performance sought for by the defendant/caveator of the unsigned sale and purchase agreement and willingness on the part of the defendant/caveator to pay the balance of the purchase price. Secondly, whether the terms in the letters marked as exhibits "PR1" and "PR4" in enclosure 5 would constitute conditions precedent and be considered as part and parcel and in amplification to the unsigned sale and purchase agreement are serious questions which ought to be adjudicated at the trial proper. Thirdly, whether the defendant/caveator is entitled to seek the remedy of specific performance of an unsigned sale and purchase agreement, a question which can only be canvassed and adjudicated upon at the trial proper.
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For the foregoing reasons, the plaintiff/caveatee's application is dismissed with costs. An ancillary order is also made and that is for an expeditious disposal of civil suit number 22-35-94(T).

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